



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Taxation ("TAX")
Virginia Administrative Code (VAC) citation	23 VAC 10-10, 23VAC10-10-10, 23VAC10-10-20, 23VAC10-10-30, 23VAC10-10-40, 23VAC10-10-50, 23VAC10-10-60, 23VAC10-10-70, 23VAC10-10-80, 23VAC10-11, 23VAC10-11-10, 23VAC10-11-20, 23VAC10-11-30, 23VAC10-11-40, 23VAC10-11-50, 23VAC10-11-60, 23VAC10-11-70, 23VAC10-11-80, 23VAC10-11-90, 23VAC10-11-100 and 23VAC10-11-110
Regulation title	Public Participation Guidelines
Action title	Repeal of the current public participation guidelines and promulgation of revised model public participation guidelines.
Date this document prepared	July 30, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations. Under § 2.2-4007.02 of the Code of Virginia, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. Chapter 321 of the 2008 Acts of Assembly (effective July 1, 2008) mandates that by December 1, 2008, agencies either adopt model public participation guidelines issued by the Department of Planning and Budget or if they need to make significant changes to the model guidelines, promulgate new public participation guidelines as fast-track regulations.

These amendments repeal the current public participation guidelines and promulgate model public participation guidelines. Highlights of the model public participation guidelines include the addition of negotiated rulemaking panels and regulatory advisory panels and instructions for notification lists. **The only change from the model public participation guidelines that TAX has made is to increase the public comment period for repropoed and fast-track regulations from 30 days to 60 days. This**

change is necessary to conform with Va. Code § 58.1-203, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Tax Commissioner approved the repeal of the current public participation guidelines and promulgation of revised model public participation guidelines on July 1, 2008.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Code of Virginia § 58.1-203 provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is mandatory under Chapter 321 of the 2008 Acts of Assembly.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to repeal the current public participation guidelines and promulgate model public participation guidelines. **The only change from the model public participation guidelines that TAX has made is to increase the public comment period for repropoed and fast-track regulations from 30 days to 60 days. This change is necessary to conform with Va. Code § 58.1-203, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."**

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii)

proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

As the proposed text does not make any changes to the model public participation guidelines, other than to conform to the mandate of Va. Code § 58.1-203, this action is not expected to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

This regulatory action repeals the current public participation guidelines and promulgates model public participation guidelines. **The only change from the model public participation guidelines that TAX has made is to increase the public comment period for repropoed and fast-track regulations from 30 days to 60 days. This change is necessary to conform with Va. Code § 58.1-203, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."**

Va. Code § 58.1-203 states that "in promulgating regulations, the Tax Commissioner shall follow the applicable provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements applicable to this regulatory action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this regulatory action.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Chapter 321 of the 2008 Acts of Assembly (effective July 1, 2008) mandates that by December 1, 2008, agencies either adopt model public participation guidelines issued by the Department of Planning and Budget or if they need to make significant changes to the model guidelines, promulgate new public participation guidelines as fast-track regulations.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	As this regulatory action will not change TAX’s current policy, there should be no impact.
Projected cost of the regulation on localities	As this regulatory action will not change TAX’s current policy, there should be no impact.
Description of the individuals, businesses or other entities likely to be affected by the regulation	As this regulatory action will not change TAX’s current policy, there should be no impact.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As this regulatory action will not change TAX’s current policy, there should be no impact.

<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>As this regulatory action will not change TAX's current policy, there should be no impact.</p>
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Chapter 321 of the 2008 Acts of Assembly (effective July 1, 2008) mandates that by December 1, 2008, agencies either adopt model public participation guidelines issued by the Department of Planning and Budget or if they need to make significant changes to the model guidelines, promulgate new public participation guidelines as fast-track regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
23 VAC 10-10		Guidelines for Public Participation.	Repeal.
23VAC10-10-10		Generally.	Repeal.

23VAC10-10-20		Identification of interested parties.	Repeal.
23VAC10-10-30		Generally.	Repeal.
23VAC10-10-40		Dissemination of notice.	Repeal.
23VAC10-10-50		Working draft.	Repeal.
23VAC10-10-60		Regulation development.	Repeal.
23VAC10-10-70		Submission of the regulation under the APA.	Repeal.
23VAC10-10-80		Adoption period.	Repeal.
	23VAC10	Public Participation Guidelines.	No change from model PPGs.
	23VAC10-11-10	Purpose.	No change from model PPGs.
	23VAC10-11-20	Definitions.	No change from model PPGs.
	23VAC10-11-30	Notification list.	No change from model PPGs.
	23VAC10-11-40	Information to be sent to persons on the notification list.	No change from model PPGs.
	23VAC10-11-50	Public comment.	Public comment period for repropoed and fast-track regulations was changed to 60 days. This change is necessary to conform with <i>Va. Code</i> § 58.1-203, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."
	23VAC10-11-60	Petition for rulemaking.	No change from model PPGs.
	23VAC10-11-70	Appointment of regulatory advisory panel.	No change from model PPGs.
	23VAC10-11-80	Appointment of negotiated rulemaking panel.	No change from model PPGs.
	23VAC10-11-90	Meetings.	No change from model PPGs.
	23VAC10-11-100	Public hearing on regulations.	No change from model PPGs.
	23VAC10-11-110	Periodic review of new regulations.	No change from model PPGs.